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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,734	03/25/2004	James F. Thomas	4823.001	8186
7590	08/25/2004		EXAMINER	
Mark D. Bowen Stearns Weaver Miller, et al. Suite 1900 200 East Broward Boulevard Fort Lauderdale, FL 33301			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 08/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	7
	10/809,734	THOMAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-25-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **Detailed Action**

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 21, 42 and 80. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology in particular the word "said" in line 7 of page 14 of applicant's disclosure. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

3. Claim 6 is objected to because of the following informalities: in line 9 "in" should be -- is--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 6, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if the electromagnetic field in line 4 is the same or different from the electromagnetic field generated by the electrical power distribution equipment as seen in lines 2-3.

Claims 2-5 and 7-8 depend from rejected claims 1 or 6 and include all of the limitations of claims 1 or 6 thereby rendering these dependent claims indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,031,353 to Gardiner.

Referring to claims 1 and 6, Gardiner discloses an apparatus or installation for repelling animals such as birds and rodents from electrical power distribution equipment – at 20,30,40,100, the power distribution equipment generating an electromagnetic field and the apparatus comprising a bare electrical conductor – at 26a,26b,36,46, mounted on the electrical power distribution equipment – see figure 1, within the electromagnetic field and in electrically insulated spaced proximity to an electrically grounded structure – at 50,56 and proximate 100 as

seen in figures 1 and 5, electrically insulated means – at 12a-12f for supporting the bare electrical conductor – see figure 1, in a substantially horizontal plane in proximally spaced relation with the electrically grounded structure – see figures 1-2, the electrical conductor acquiring an electrical potential induced thereon by the electromagnetic field, whereby a creature coming into contact with both the electrical conductor and the grounded conducting structure completes an electrical circuit and is administered an electrical shock – see for example figures 1-2 and column 5.

Referring to claims 4-5 and 7-8, Gardiner discloses voltage regulation means being a variable resistor electrically connected to the bare electrical conductor – at 26a,26b,36,46, and to a grounded structure – at 50 and proximate 50 as seen in figure 5, for regulating the voltage induced on the bare electrical conductor – see for example figure 5, column 4 lines 50-68 and column 5 lines 1-68.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner as applied to claim 1 above, and further in view of U.S. Patent No. 6,519,131 to Beck. Gardiner does not disclose the electrically grounded conducting structure comprises angle iron. Beck does

disclose the electrically grounded conducting structure comprises angle iron – at 44,46.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gardiner and add the angle iron grounded conducting structure of Beck, so as to allow for the device to apply electrical shock to the animals and thus control the animals.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardiner as applied to claim 1 above, and further in view of U.S. Patent No. 5,850,808 to Burdick. Gardiner does not disclose the bare electrical conductor comprises copper wire. Burdick does disclose the bare electrical conductor – at 14,16,18, comprises copper wire – see for example column 2 lines 62-64. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gardiner and add the copper wire conductor of Burdick, so as to allow for the proper electrical shock to be administered to the animals.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to electrical animal repelling devices in general:

U.S. Pat. No. 2,647,228 to Just – shows electrical shock animal control device

U.S. Pat. No. 4,110,944 to Carlson – shows bird-repelling device

U.S. Pat. No. 4,299,048 to Bayes – shows electrical shock bird repelling device

U.S. Pat. No. 5,095,646 to Bunkers – shows electrical bird exterminating device

U.S. Pat. No. 5,255,896 to Letarte et al. – shows electric fence to repel birds

U.S. Pat. No. 5,353,543 to Teraoka – shows electromagnetic field to repel birds

U.S. Pat. No. 5,369,909 to Murphy – shows electrical exterminating device

U.S. Pat. No. 5,918,404 to Ohba – shows electromagnetic field to repel birds

U.S. Pat. No. 5,992,828 to Burdick – shows electrical shock device to repel birds

U.S. Pat. No. 6,283,064 to Djukastein et al. – shows electrical repelling device

U.S. Pat. No. 6,402,107 to Chervick et al. – shows repelling device on power lines

EP Pat. No. 0328866 – shows electrical shock device to repel animals

EP Pat. No. 0450258 – shows electrical shock device to repel animals

FR Pat. No. 2684271 – shows electrical shock device to repel animals

WO 93/20689 – shows electrical shock device to repel animals

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

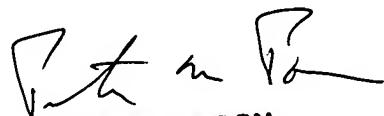
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

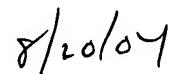
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



PETER M. POON  
SUPERVISORY PATENT EXAMINER



8/20/04